

**EXHIBIT C**

DBMP DECISION

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE J. CRAIG WHITLEY,  
UNITED STATES BANKRUPTCY JUDGE

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P R O C E E D I N G S

2 (Call to Order of the Court)

3 THE COURT: Okay. Have a seat, everyone. Good  
4 morning.

5 We are back in the DBMP base case and adversary. This  
6 is a videoconference hearing, given that what we're doing  
7 today, primarily, is announcing rulings and talking about  
8 scheduling matters.

9 I see we have some folks in the courtroom. We're glad  
10 to have you. I don't know if y'all are announcing, but looks  
11 like we've got building staff.

12 But in any event, we do not have an appearances list  
13 today. That got overlooked. So I'm going to have to ask,  
14 first of all, that we get appearances by all the parties and I  
15 would suggest, in the interest of not talking over one another,  
16 that the lead attorney, or whoever is going to be the spokesman  
17 today, primary spokesman, announce other appearances for those  
18 allied with yourselves. Then we'll come back and pick up  
19 anyone who else, who wasn't listed otherwise and feels the need  
20 to make an appearance.

21 So starting with that, let me ask who's on the line  
22 for the debtor? Control --

23 MR. GORDON: Morning, your Honor.

24 THE COURT: Yes, Mr. Gordon.

25 MR. GORDON: Good morning. Greg Gordon, Jones Day, on

1 behalf of the debtor. Also with me is Jim Jones from Jones Day  
2 and Jeff Ellman from Jones Day.

3 THE COURT: Very good.

4 MR. GORDON: Thank you.

5 THE COURT: Anyone else for the debtor, local counsel  
6 or otherwise?

7 MR. WORF: Good morning, your Honor. Richard Worf  
8 from Robinson Bradshaw for the debtor this morning.

9 THE COURT: Okay.

10 Anyone else?

11 (No response)

12 THE COURT: All right. Affiliates?

13 MR. STEEL: Morning, your Honor. Howard Steel at  
14 Goodwin on behalf of CertainTeed LLC, CertainTeed Holding  
15 Corp., and Saint-Gobain Corp. With me is my partner, Michael  
16 Goldstein, and Jack Miller of Rayburn Cooper.

17 THE COURT: Thank you.

18 Anyone else on, on the affiliates' side needing to  
19 announce?

20 (No response)

21 THE COURT: How about the ACC, then? Better unmute.

22 MS. RAMSEY: Apologies, your Honor. I'm rusty.

23 Good morning, your Honor.

24 THE COURT: Good morning.

25 MS. RAMSEY: Natalie Ramsey from Robinson & Cole on

1 behalf of the Committee, along with my colleague, Katherine Fix  
2 from Robinson & Cole. Also appearing for the Committee are  
3 Todd Phillips from Caplin & Drysdale, David Neier and Carrie  
4 Hardman from Winston & Strawn, and Glenn Thompson from Hamilton  
5 Stephens.

6 THE COURT: Okay, very good.

7 MS. RAMSEY: Thank you.

8 THE COURT: Anyone else on behalf of the ACC?

9 (No response)

10 THE COURT: FCR, then. Ms. Zieg?

11 MS. ZIEG: Good morning, your Honor. Sharon Zieg from  
12 Young Conaway Stargatt & Taylor on behalf of the Future  
13 Claimants' Representative. Mr. Esserman is on the phone this  
14 afternoon as well, this morning as well. And we also have Ed  
15 Harron, Robert Brady, and Sean Greecher from Young Conaway and  
16 North Carolina counsel, Felton Parrish.

17 Thank you.

18 THE COURT: All right, very good.

19 Any, anyone else needing to announce?

20 (No response)

21 THE COURT: That got it?

22 (No response)

23 THE COURT: Okay.

24 There's a filed agenda in the base case -- it's, I  
25 guess, Docket No. 1495 -- that explains what's before the Court

1 this morning.

2 Let me ask first. It's traditional to get case  
3 updates before we start.

4 Anything on the debtor's end?

5 MR. GORDON: Good morning, your Honor. It's Greg  
6 Gordon again. Just a very short list of things and I'll start  
7 with the one that's maybe a little mystifying to us.

8 I, I think we reported at the last hearing that we had  
9 a ruling in Virginia on a motion to transfer.

10 THE COURT: Uh-huh (indicating an affirmative  
11 response).

12 MR. GORDON: And there you may recall there was a  
13 motion to quash filed by matching claimants. The debtor filed  
14 a motion to transfer. That motion was granted. And nothing's  
15 appeared in the docket of either the Virginia court or this  
16 Court and we're puzzled by that because we just found out that  
17 according to Virginia, they actually transferred the matter on  
18 June the 1st.

19 THE COURT: Hmm.

20 MR. GORDON: And so we don't know whether it somehow  
21 got lost in transit or is lost somewhere in North Carolina, but  
22 that's something that I guess we need to follow up on and I'd  
23 appreciate any guidance your Honor might have in terms of how  
24 to do that.

25 THE COURT: Well, I think the simplest way on our end

1 would be for me to ask the clerk to see if they have anything  
2 and then we'll send you an e-mail either way. Beyond that, I  
3 don't know that I've got much influence with the Virginia  
4 court, but, or the post office, for that matter, but I'm not  
5 sure how they transferred this. I assume they did it by paper  
6 means.

7 MR. GORDON: Yeah. I, I don't know if we know the  
8 answer to that. Jeff Ellman's on.

9 Jeff, do you know what the means of transfer were?

10 MR. ELLMAN: I, I do not. I'm sure we could find out.  
11 We, we had talked to the, the clerk this morning just to get an  
12 update and, and they said it was transferred the normal way.  
13 We didn't, we didn't inquire.

14 THE COURT: Okay.

15 MR. ELLMAN: I, I would assume it could be electronic,  
16 but I really don't know, your Honor.

17 THE COURT: If --

18 THE COURTROOM DEPUTY: Electronic, we'll get it like  
19 right away.

20 THE COURT: Right.

21 THE COURTROOM DEPUTY: What we --

22 THE COURT: Well, we'll go back and, and check. I  
23 don't think we've got anything in a SPAM folder, but who knows.  
24 If y'all will work on your end, though, and try to talk to the  
25 Virginia clerk and see if they can ascertain how it was

1 transmitted, that would be helpful.

2                   Anyone else got an interest in that? Need to say  
3 anything?

4                   (No response)

5                   THE COURT: Okay.

6                   Any other updates, Mr. Gordon?

7                   MR. GORDON: Yes. And, and I would say with respect  
8 to that particular matter, the Virginia transfer, we would like  
9 to, to get that motion to quash up for hearing in August in  
10 this court, assuming that we can track down the paperwork on  
11 that. So just --

12                  THE COURT: Okay. That would be helpful.

13                  MR. GORDON: Yeah. I'm just advising your Honor and  
14 the other parties --

15                  THE COURT: Okay.

16                  MR. GORDON: -- that would be our intention.

17                  And then otherwise, your Honor may recall there was  
18 also a motion to quash filed in Delaware --

19                  THE COURT: Uh-huh (indicating an affirmative  
20 response).

21                  MR. GORDON: -- by the trusts and certain matching  
22 claimants and that matter is still pending. We haven't heard  
23 anything on that at this point.

24                  THE COURT: Okay.

25                  MR. GORDON: Otherwise, we are intending to have a

1 meet and confer with the Committee and the FCR about discovery  
2 matters --

3 THE COURT: Uh-huh (indicating an affirmative  
4 response).

5 MR. GORDON: -- in the pending adversary proceedings  
6 and also, we're intending to have a meet and confer with the  
7 Committee and the FCR on their request for product-related  
8 information.

9 THE COURT: Uh-huh (indicating an affirmative  
10 response).

11 MR. GORDON: And in fact, that's scheduled, actually,  
12 for later today.

13 THE COURT: Okay.

14 MR. GORDON: I think, your Honor, that's, that's all  
15 I've got. Otherwise, we obviously have the status conference  
16 today on privilege log matters, but Mr. Jones will handle that  
17 when that matter comes up.

18 THE COURT: Okay.

19 Anything on behalf of --

20 MR. GORDON: Thank you.

21 THE COURT: -- the ACC? Ms. Ramsey?

22 MS. RAMSEY: Apologies, your Honor, again, for the  
23 delay.

24 No, nothing for us, your Honor.

25 THE COURT: How about the FCR, then?

1                   Was it Control 6?

2                   MS. ZIEG: Nothing else, your Honor.

3                   THE COURT: Okay, very good.

4                   Okay. Ready to move on, then, I suppose.

5                   We've got one status matter and then two  
6 announcements. I don't know how y'all prefer to approach this.  
7 Why don't we talk briefly about the, what is denominated as  
8 Exhibit, as No. 3, the case management order in the adversaries  
9 with regard to the negotiations and the updates to the  
10 privilege log and the status of, of next steps.

11                  MR. JONES: Thank you, your Honor. This is Jim Jones  
12 at Jones Day for the debtor.

13                  THE COURT: Okay.

14                  MR. JONES: And I believe -- and I see Ms. Hardman --  
15 and we exchanged e-mails last evening or yesterday afternoon,  
16 last evening, on this topic. So with, with Carrie's  
17 permission, I, I will give what I understand to be the status  
18 and then she can weigh in and let me know what I got sideways.

19                  THE COURT: Okay, very good.

20                  MR. JONES: I believe, your Honor, that status is  
21 this, that is, the debtor, as it had committed, revised,  
22 reviewed and revised its previously served privilege log, which  
23 at last count numbered roughly 4,000 entries, and that log had  
24 been served as a part of the adversary proceeding on the  
25 preliminary injunction early in the case.

1                   THE COURT: Uh-huh (indicating an affirmative  
2 response).

3                   MR. JONES: That process was undertaken after the  
4 debtor received the February 4 letter from, 2022, letter from  
5 the ACC and the FCR about what they considered to be concerns  
6 and challenges with the log. So we undertook that, as we  
7 committed we would, the review and revision process and served  
8 the revised log when we said we would, on June 17, 2022. And  
9 with that log we provided a cover letter that explained the re-  
10 view and revision process in fairly short form, addressed at  
11 least certain of the concerns that weren't themselves directed  
12 to log entries but to privilege matters more generally in that  
13 cover letter, which was dated June 17 as well, and then we also  
14 produced that same day a relative few number of documents that  
15 upon the re-review were deemed to be not privileged. I think  
16 the total was 110 documents, 64 in whole, 46 in redacted form.

17                  And then we waited for some period of time for  
18 reaction or response from the ACC and the FCR -- it's, it's  
19 4,000 entries. So it, it would take some time to review -- and  
20 reached out thereafter, which I think was maybe Tuesday  
21 afternoon, to the ACC and the FCR via e-mail and asked if they  
22 were still in process of reviewing, as we expected they might  
23 be, and if they would like to gather and meet and confer about  
24 the revised log. We heard from Ms. Hardman yesterday  
25 afternoon, I believe, that they were indeed still reviewing

1 and, yes, they still had some concerns and would like to meet  
2 and confer.

3 And then the last bit of status, I think, is my  
4 response last evening that we're happy to and I batted up some  
5 times next week when that could be accomplished.

6 THE COURT: Okay.

7 MR. JONES: So I think that is status as of now.

8 And I believe privilege-related matters on the go  
9 forward would include these. After the review of the log, I  
10 believe it is incumbent upon the ACC and the FCR to identify up  
11 to 50 documents off the log that they would like your Honor to  
12 review in camera and up to 25 privilege assertions that they  
13 think were inappropriate during the PI and that would occur, I  
14 think it's scheduled to occur within 30 days of service of the  
15 log. So 30 days from June 17.

16 THE COURT: Uh-huh (indicating an affirmative  
17 response).

18 MR. JONES: We're to respond with anything that we  
19 wish your Honor to review by way of counterdesignations 14 days  
20 thereafter which, if everybody took the maximum amount of time,  
21 I think would get us to, roughly, the end of July. And then  
22 there is a, a submission date that is, that the debtor is, I  
23 believe, obliged to provide to your Honor that which has been  
24 designated for in-camera review on, five days after the last  
25 identification. So if everybody took all their time, that

1 would come the first week of August.

2                   And then, I think the only other thing in the CMO that  
3 addresses or is directed, rather, to these matters is a status  
4 conference after your Honor has had a chance to receive,  
5 review, and consider whatever he wishes to receive and review  
6 and consider which I think is the, will be the balance of  
7 whatever is submitted.

8                   So I think that is, to the best of my ability, an  
9 update for your Honor.

10                  THE COURT: All right.

11                  Ms. Hardman, where do you think matters lie?

12                  MS. HARDMAN: I echo -- Carrie Hardman from Winston &  
13 Strawn on behalf of the Committee.

14                  I echo a lot of what Mr. Jones has said. So I will  
15 not, will try my best not to repeat them.

16                  The only, I think, issues I wanted to raise were, or  
17 points to make were simply that I think we might have received  
18 a few more documents than, than Mr. Jones had on his number.  
19 We had 185 in terms of the documents we received, but, you  
20 know, a hundred versus 185, I don't know that that makes a huge  
21 practical difference for, for these purposes. Some of the  
22 documents we received which we reviewed initially certainly  
23 provide some relevant information from those that were de-  
24 designated from the log --

25                  THE COURT: Uh-huh (indicating an affirmative

1 response).

2 MS. HARDMAN: -- and are providing a lot of the detail  
3 that we thought we would have questions about and we've been  
4 trying to understand relative to privileged communications  
5 documents that we think were otherwise subject to claims of  
6 privilege.

7 And we certainly appreciate the efforts of the debtor  
8 to review and revise the log and provide those limited  
9 documents to the estate representatives. We are, as Mr. Jones  
10 said, continuing to review those 4,000 entries because nearly  
11 all of them were edited in some manner. So we just simply need  
12 to get through them. As you may suspect, there will likely be  
13 additional issues that we will work through with the parties,  
14 or endeavor to, and if we cannot, we will be before your Honor.  
15 At this point we've identified a number of issues that do  
16 continue to permeate the log initially and remain unanswered  
17 from our perspective with respect to that February 4th letter  
18 that we sent. Those include sufficiency of description,  
19 including the claims of common interest which permeate 90, more  
20 than 95 percent of the log, and the fact that there are still  
21 no subject matter lines in the log at all. And those are  
22 issues that we'll talk about with Mr. Jones and his colleagues  
23 in the coming days and weeks. We look forward to addressing  
24 those issues in further detail on those calls.

25 And in the meantime, Mr. Jones is right. We do have a

1 deadline of providing those 50 documents and 25 instructions  
2 not to answer to your Honor from our perspective. And that  
3 deadline is coming up and the 30-day window runs July 17th --

4 THE COURT: Uh-huh (indicating an affirmative  
5 response).

6 MS. HARDMAN: -- which is a Sunday.

7 While we certainly appreciate the Court's dedication  
8 to these cases, we thought if it was okay with the debtor and  
9 non-debtor affiliates and with the Court, that we would provide  
10 those to you on July 18th, which is a Monday, instead.

11 THE COURT: Uh-huh (indicating an affirmative  
12 response).

13 MS. HARDMAN: That way, the response deadline for  
14 Mr. Jones as well will be on a business day and we don't have  
15 to deal with any practical or mechanical concerns that the  
16 parties may have in submitting documents under seal or  
17 identifying information on, that would need to be under seal on  
18 a Sunday. It's just an odd, something I'd offer if --

19 THE COURT: Uh-huh (indicating an affirmative  
20 response).

21 MS. HARDMAN: -- the parties were amenable to it and  
22 the Court was as well.

23 THE COURT: Does the FCR have a stake in any of this?  
24 Do they need to be heard?

25 (No response)

1                   THE COURT: Well, I'm glad you said "mechanical" and  
2 "practical" because I have one to add. Since we've moved out  
3 this far, on the 21st of July I have to have an arthroscopic  
4 procedure on my ankle. That means I'm going to be out of the  
5 office for three or four days afterwards and it will be  
6 practically difficult for me to -- well, I could review them,  
7 but if I, to the extent I'm on pain meds for a few of those  
8 days, it might not be a fruitful exercise for anyone.

9                   But I would like to back up just a week or so so that  
10 I will have the opportunity to review those documents. I plan  
11 to be back here -- we've got an Aldrich hearing on the 28th and  
12 I'm planning to do that hearing. So if we could get those --  
13 if we can back all the deadlines up so that the production is  
14 August the 1st, I think that would behoove all of us.

15                  MR. JONES: Your, your Honor, this is Jim Jones for  
16 the debtor.

17                  The production itself doesn't happen until August 5 --

18                  THE COURT: Okay.

19                  MR. JONES: -- under the current deadline. So the  
20 identifications come first.

21                  THE COURT: Okay.

22                  MR. JONES: You won't be seeing, you won't be seeing  
23 documents for in-camera inspection until the first week of  
24 August --

25                  THE COURT: Okay.

1 MR. JONES: -- at the soonest.

2 MS. HARDMAN: I -- for what it's worth, your Honor, I  
3 agree with Mr. Jones. This was simply to not file publicly  
4 information that maybe Mr. Jones or his colleagues believe is  
5 privileged. And so if we are identifying things that he would  
6 like to remain redacted --

7 THE COURT: Okay.

8 MS. HARDMAN: -- I just simply didn't want to do that  
9 on a Sunday.

10 THE COURT: All right.

11 MS. HARDMAN: It's not about submission of the  
12 documents to you until, until August.

13 THE COURT: I misunderstood what you were saying,  
14 then.

15 So that, that works fine. We've got a pretty full  
16 week the week after the 5th, but I'll try to get something back  
17 to you, some kind of reaction. I would suggest that we --  
18 gracious. We go all the way to September the 15th before we  
19 have another hearing after that. If I get them on the 5th, I'm  
20 unlikely to be able to give you a feedback on the 11th of  
21 August. So I think we're talking about September, then.

22 So that's not ideal, but we'll do what we can.

23 Does anyone see a major --

24 MS. HARDMAN: Understood, your Honor.

25 THE COURT: -- headache there?

1 (No response)

2 THE COURT: Okay.

3 MR. JONES: Not, not for the debtor, your Honor.

4 THE COURT: Okay.

5 MR. JONES: And September 18 or, rather, July 18 is,

6 the Monday, is perfectly fine with us.

7 And one quick footnote for Ms. Hardman. In the 185  
8 document versus 110 document difference, Carrie, I believe is  
9 and, and I'm informed is a consequence of stuff you already  
10 have. It's -- we, we produced on June 17 with family members.  
11 So there will be documents that were not withheld before that  
12 are attached to the now newly produced documents.

13 So the diff, the delta there of whatever it is, 75,  
14 should be stuff you already have.

15 THE COURT: Okay, very good.

16 All right. So -- well, let's just aim for the, unless  
17 something else goes awry, I'll try to give you my reactions to  
18 those on the 15th of September, okay, at that omnibus hearing  
19 day.

20 MS. HARDMAN: Thank you, your Honor.

21 THE COURT: Okay. Anything else there? No other --

22 MS. ZIEG: Your Honor, Sharon Zieg from Young Conaway.

23 I just want to let you know that we're working with  
24 the Committee. I was a little late to the, turning on the  
25 camera and the --

1                   THE COURT: Okay.

2                   MS. ZIEG: -- off the mute button when you asked if we  
3 had anything to add.

4                   THE COURT: So that's got it?

5                   (No response)

6                   THE COURT: All right, very good.

7                   Okay. Well, we'll move on.

8                   We had two different things that I needed to announce  
9 and it was regarding the case management order and the motion  
10 to dismiss. I don't know if the parties have a preference on  
11 which order to take those. I don't know that -- well, I think  
12 to a certain extent we may have more to talk about with regard  
13 to the case management matters.

14                  So unless y'all have a decided preference -- and I'm  
15 asking at this point if you do -- I would just propose that we  
16 talk about the motion to dismiss next.

17                  Anyone got a reason to think we go in another order?

18                  Okay.

19                  MS. HARDMAN: no, your Honor.

20                  MR. GORDON: No preference from the debtor, your  
21 Honor.

22                  THE COURT: All right.

23                  Okay. We're picking up in the Adversary 22-3000,  
24 Madam Clerk, with the motion of the defendants to dismiss the  
25 case.

1           I'm going to be short and succinct about this. I  
2 could talk in, at length, but y'all've already said just about  
3 everything there is to be said about these matters in the  
4 briefs. I will say that, at least at this point in time, on a  
5 motion to dismiss I believe we've got a lawsuit and we've got a  
6 complaint that adequately states claims. Whether they prove  
7 out is something else and who knows at this juncture, but the  
8 bottom line is in the main, I agree with the plaintiffs'  
9 committee reps, future rep, and believe that there is a  
10 fraudulent conveyance lawsuit, etc., here and would deny the  
11 motion to dismiss.

12           I'm not going to say a lot about that, but at least  
13 for present thinking, subject to being, having that thinking  
14 changed, I generally agree with the position that the reps have  
15 been taking that, essentially, you can look at this two  
16 different ways. You can say this is, these are potential  
17 fraudulent conveyances because these would be assets of the  
18 debtor had they not been transferred and that the divisional  
19 merger effectively sticking one company, the debtor company,  
20 with all of the asbestos liabilities where the assets went  
21 otherwise, that effectively, you could make that the fraudulent  
22 conveyance seen through the debtor's eyes, or, alternatively, I  
23 think, given the, the way the Texas statute is constructed, you  
24 can alternatively view this as a fraudulent conveyance  
25 effectively by Old CertainTeed with the present debtor standing

1 in the shoes of the old company. Because to do otherwise, it  
2 would never be raised. We all know the Texas statute  
3 contemplates that divisive mergers are not going to be  
4 prejudicial to creditors and we know that they retain their  
5 remedies if they, if the mergers were.

6 If the company, if you will for present purposes the  
7 bad company, the company with the, the asbestos liabilities and  
8 fewer assets as compared to the good company, the sibling that  
9 was created that has most of the assets, operations, and  
10 employees, if the bad company can't be seen to be standing in  
11 the shoes of the Old CertainTeed, then I don't know how anyone  
12 can challenge, as the Texas statute contemplates that a party  
13 would be able to challenge. It -- the bottom line is the good  
14 company would never have reason to challenge the divisive  
15 merger and the bad company, effectively, is, for fraudulent  
16 conveyance purposes, standing as the old company. I think you  
17 can look at it both ways, but the bottom line is the way this  
18 was structured -- and it was done so intentionally -- otherwise  
19 with a bankruptcy following the divisive merger, then no one  
20 gets to challenge the divisive merger and the allocations.

21 So I think either way at this point in time -- and I'm  
22 subject to having my mind changed later on -- I think that  
23 we've got standing here and there are transfers within the  
24 Bankruptcy Code. I'm fully sensitive to the plain meaning  
25 argument of what the Bankruptcy Code says that can be avoided,

1 but plain meaning is subject to absurd results and that's the  
2 exception to plain meaning. If we take this in the very narrow  
3 way that the movants are asking me to, then effectively, you  
4 end up with the possibility that someone could engineer -- and  
5 I'm not saying that's what happened here. That's to be decided  
6 -- but if someone was craven and wanted to divide an otherwise  
7 profitable company just to get rid of certain liabilities that  
8 you just as soon not pay and you put all of the assets in a  
9 good company and all of the liabilities in a bad company, if  
10 the bad company cannot sue for that harm or the creditors of  
11 that bad company can't sue with a bankruptcy being filed  
12 immediately after, there's, the door is wide open to wholesale  
13 fraud and that cannot be, as Mr. Huff has opined after the  
14 fact, in his mind, was not what the Texas merger statute was  
15 designed to do. There's no indication. It's supposed to be  
16 neutral for debtor-creditor purposes.

17 So that just can't be the way it is. And again, if  
18 you are taking it at plain meaning likewise on the obligation  
19 side, the suggestion is, well, if there are obligations to be  
20 avoided, then those are the obligations that the, the debtor,  
21 DBMP, could avoid the obligations that were, it was saddled  
22 with, meaning the asbestos liabilities, and if you avoided  
23 those, then DBMP wouldn't owe the liabilities, but so, too, the  
24 new company under the wording of the Texas statute wouldn't be  
25 liable for those liabilities and Old CT has been dissolved as a

1 result of the merger. Again, you end up with no recourse  
2 whatsoever and that's contrary to the stated intention of the  
3 Texas statute and it would be totally contrary to all Anglo-  
4 American notions of fraudulent conveyance law.

5 So bottom line is I, I think that part, we don't need  
6 to get there.

7 The other thing I wanted to mention. I, I generally  
8 agree with most of the arguments for present purposes made by  
9 the plaintiffs, but I did want to talk about in, intentions.  
10 One of the things our Circuit, like most, takes the view of is  
11 courts should be hesitant to dismiss complaints under Rule 9  
12 where the defendant's been made aware of the circumstances  
13 which it will have to prepare a defense and which the plaintiff  
14 has substantial pre-discovery evidence of the facts. Those all  
15 come out of the Harrison case.

16 And in this instance we're in a very different  
17 situation than most parties, defendant parties in a lawsuit.  
18 We've been in this bankruptcy for a couple years now. We have  
19 fought a multi-day evidentiary personal, preliminary injunction  
20 fight after a year's worth of discovery and there can be no  
21 question by anyone as to what this complaint is about. It's  
22 detailed. But also, we have the backdrop of knowing what it's  
23 about and what the contentions are, generally, by the plaintiff  
24 group in this case.

25 So between the two, I think we've got an adequate

1 complaint here. It's a little bit short on, at least in stated  
2 language, on whether or not for constructive trust purposes  
3 whether we have insolvency adequately pled or lack of  
4 reasonably equivalent value. As to that, I thought about that  
5 and wondered whether I, I would require a further amendment to  
6 just state what the liabilities were that were assumed in the,  
7 in the divisive merger, the asbestos liabilities, so that they  
8 could be compared as against the assets received. I decided  
9 after looking through the four corners of the complaint -- and  
10 again, knowing what we all know about this case -- that it's  
11 adequate. It's not superlative, but it's adequate. And we all  
12 know that, generally, reasonably equivalent value and  
13 insolvency tends to be fact issues at the end of the day.

14 We also know why this debtor was designed the way it  
15 was. It was intentionally set up so that it couldn't be too  
16 solvent because otherwise, there would be no need for the  
17 affiliates to come to the rescue, much like the calvary, to  
18 provide funding so that a 524(g) relief could be afforded to  
19 them.

20 So I think just by the structure itself, it is, it  
21 would defy logic for it to be a solvent entity.

22 We also know that we have the history of the tort  
23 litigation that's described in the complaint and we know the  
24 sums based on the debtor's informational briefs that the debtor  
25 has paid out over the years and we all know asbestos

1       liabilities, you folks more than, than anyone. So we wouldn't  
2       be fighting all the facts that we're having at the present time  
3       or even having fraudulent conveyance litigation if all  
4       concerned didn't think that there was a substantial likelihood  
5       that this debtor was insolvent at the time that, based on the  
6       allocations or had reasonably equivalent value, lack of that.

7           So for pleading purposes, we'll fight about where we  
8       come out on insolvency and the like later on, but I think for  
9       pleading purposes it's sufficient. The same, too, for the  
10       other counts.

11           The one thing I do have a nit with. I'm not at all  
12       certain when it comes to remedies that punitive damages are,  
13       are possible in a fraudulent conveyance lawsuit. I'll keep an  
14       open mind about that, but I don't think I have to decide it for  
15       present purposes. Remedies aren't failure to state a claim.  
16       It's just some of the remedies you may ask for that claim  
17       aren't available to you. So we'll see where that goes.

18           But otherwise, I believe that the motion should be  
19       dismissed largely for the reasons that have been described by  
20       the plaintiffs in the action.

21           And would call upon the plaintiffs for a short order  
22       to that effect. Run it by the, the defendants for their  
23       comments and we'll go from there, okay?

24           Anybody got anything or are we ready to move on?  
25       (No response)

1                   THE COURT: Okay. Silence, so I assume that we're  
2 ready to move on.

3                   Ms. Hardman, did you want to say something?

4                   MS. HARDMAN: Just confirming we will submit an order  
5 to your Honor.

6                   THE COURT: Okay.

7                   MS. HARDMAN: That's all.

8                   THE COURT: Thank you.

9                   MS. HARDMAN: Thank you.

10                  THE COURT: All right. Okay. Now we'll get into the  
11 ethereal part of the morning.

12                  The CMOs. I think this would have been difficult  
13 under the best of circumstances. I think, given the short time  
14 period between when this was heard and when the Aldrich/Murray  
15 matters were heard last week and the fact that there was  
16 movement being had in Aldrich/Murray on negotiations between  
17 the, the relatively same parties, the ACC there and the debtors  
18 on what was going into the estimation case management orders,  
19 I'm not even sure I'm totally certain as to what the agreements  
20 are there and where the points of disagreement lie in that  
21 case.

22                  My first question to you in this case -- and, and then  
23 the fact is what's been described in that case, or those cases  
24 and this one are not entirely the same, even though the cases  
25 are very similar. So I'm not sure I've got all of this and it,

1 I'm a little reluctant to get too far in the weeds about  
2 resolving individual details. We may have to, but I would  
3 prefer not to.

4 My first question to you is has there been any  
5 movement since we were last arguing about this with regard to  
6 the CMOs and the discovery plan? Any resolutions whatsoever?  
7 Nothing like what's been in Aldrich or Murray.

8 MS. ZIEG: No, your Honor.

9 THE COURT: Okay.

10 MS. RAMSEY: Your Honor, we have a meet and confer  
11 immediately following this call with respect to one issue that  
12 might be relevant to the case management order on estimation  
13 and that is the issue of, I'll call it, sort of upfront  
14 discovery with respect to product --

15 THE COURT: Right.

16 MS. RAMSEY: -- product information and the like --

17 THE COURT: Uh-huh (indicating an affirmative  
18 response).

19 MS. RAMSEY: -- distribution information. Otherwise,  
20 that, that is correct. Ms. Zieg is correct. We, we have not.

21 THE COURT: Okay.

22 Everyone good, then?

23 (No response)

24 THE COURT: Okay. Well, to the extent that I can do  
25 this, I'm going to try my best. I have tried to do a

1 comparison between your motions and your proposed orders and I  
2 have tried to compare them to the Bestwall CMO and to come up  
3 with some general thoughts about all of this and what I think  
4 I'm going to have to do, at least for, at the moment, is to  
5 give you the broad-brush impressions of the Court and then ask  
6 you to go back and talk some more about the, the way this would  
7 play out and what we do when and the dates and, and the like.

8 Let me just say -- if I can get my notes here -- at  
9 the outset that I am -- there we go. Now we're ready.

10 Let me say at the outset that I think part of our  
11 problem in all of this is the breadth and reach of the  
12 discovery that we all contemplate here that is going to be  
13 necessary in estimation and on a global level I would just like  
14 to say at the start here that it strikes me that a lot of the  
15 trouble is because the parties are not proposing, at least on  
16 their own behalfs, to sample and the parties are desiring to,  
17 to do some very broad discovery that is going to involve a  
18 great deal of discovery being occasioned on lawyers. That's  
19 going to cause a bunch of privilege problems. No surprise to  
20 any of you on that.

21 I would say on the first hand that as a general  
22 principle I'm not a big fan nor are the Rules on doing  
23 discovery on lawyers. You know what those Rules are, but the  
24 bottom line is that it, it quickly brings us into a morass of  
25 what is privileged and what is not privileged and a great deal

1 of expense. And y'all've been telling me about Bestwall and  
2 how we started with a half a million, a million and a half  
3 documents being sought by the, the claimants in Bestwall and  
4 working that down to a mere half million documents that were  
5 subject to privilege claims. And now what? And all the  
6 problems that have been sued from then. And about, you know,  
7 that's not surprising to me at all if you're going to try to  
8 ask for every document that the claimants have. Similarly, if  
9 the debtor is contemplating a similar effort on the tort  
10 lawyers, we're going to have those problems all over again.

11 I would just at this point in time without ruling urge  
12 that we need some reasonableness here, folks. I see these  
13 cases grinding down and not moving anywhere other than  
14 spreading out into interminable discovery fights. Bestwall,  
15 these, I suspect the same is going on in front of Judge Kaplan  
16 in, in the LTL case, but the bottom line is that I don't know  
17 that that works to anyone's benefit and I would suggest to you  
18 that, that let's go back and all read Rule 1 of the Federal  
19 Rules. We're here "to secure the just, speedy, and inexpensive  
20 determination of every action." The action here is an  
21 estimation hearing, not even an actual adjudication of the  
22 claims.

23 So I would suggest to you that we need to have some  
24 perspective about what we're doing. And bear in mind that, if  
25 they are to be taken at their word, the claimants aren't going

1 to vote for the plan even after I estimate. In Garlock, Judge  
2 Hodges came in at a low number, \$125 million, for the aggregate  
3 liabilities. The claimants, as I recall, were asserting a \$1.6  
4 billion number. The ACC -- the FCR, I think, was a little  
5 lower at, maybe, 1.2 and we ended up with the case resolving  
6 itself not based on the estimation ruling, but two or three  
7 years later after a great deal of fighting and you settled for  
8 5, 600 million.

9                   So let's put this in perspective. Estimation is  
10 supposed to avoid the delays and expense of a full  
11 adjudication. If we're going to be just as gnarly as what,  
12 what's going to be done in a full adjudication, we are hardly  
13 doing ourselves any good with estimating. So the bottom line  
14 is that I would encourage reasonableness, negotiation,  
15 sampling. I would encourage you to work on, together, on  
16 privilege logs and the like.

17                   So that -- that's the -- that's my preaching to the  
18 choir, I guess, in this case. I'll, I'll go on with what we  
19 talk about.

20                   I want to hit the general topics and if we have to get  
21 into the details, we will. But as I said, I don't think  
22 that -- that's likely to be perilous. If I start telling you  
23 what the deadline are, you got to bear in mind it's been 28  
24 years since I practiced law. I never practiced asbestos law.  
25 I never had the, a fight of the, discovery fight of the

1 magnitude that y'all are about to embark upon.

2 So it would be much better and a better result for all  
3 concerned if you can work out the details after I tell you what  
4 I think about the large principles.

5 The first one, of course, is that we have a  
6 fundamental disagreement as to when written discovery is  
7 supposed to end, or at least when the deadlines all expire with  
8 the debtors wanting me to effectively say that we don't get to  
9 those points until they're satisfied with the PIQ responses  
10 and, and trust discovery. They've got to get all of that  
11 before we end anything. So the debtor's dates are all keyed to  
12 a, an event that none of us can say with any certainty as to  
13 when that is. Conversely, the reps, on the other hand, want  
14 specific dates and deadlines that are hard deadlines and  
15 effectively say that PIQ compliance isn't going to -- you're  
16 not really directly saying this -- but that putting PIQ  
17 compliance off to the side so it doesn't affect the estimation  
18 discovery.

19 I read both of those alternatives as an infringement  
20 on the function of the Court. The bottom line is -- I'm not  
21 accusing you of bad things. I understand why you want to do it  
22 -- but the bottom line is we're here to decide when y'all can't  
23 decide and to make adjustments when they're necessary and where  
24 cause is shown.

25 So I agree with the reps. I think we need some dates,

1 date-driven deadlines, but I think the deadlines have to be  
2 subject to being moved upon a showing of cause. They're a  
3 little more than guideposts, but they're, they're certainly not  
4 like statutes of limitations, which are immutable.

5 So the bottom line is that I think we should go with  
6 the representatives' thoughts that we set the deadlines and I  
7 don't mind, in terms of trying to reach a, a Fall of 2024  
8 estimation hearing. We've got some young folks in the  
9 courtroom listening and they might be shocked that we're  
10 talking about a two-year path to get to a motion hearing, but  
11 that's, that's what we're talking about. But the bottom line  
12 is that I don't think we can say now that we're going to set  
13 those dates and they're not going to be moved.

14 We're talking in the other case, Aldrich and Murray,  
15 about setting dates to take us through written discovery and  
16 then having a further pre-trial conference or a further pre-  
17 trial order to set the follow-on dates that supersede that. I  
18 see some wisdom in that and I would encourage you to consider  
19 it. If y'all want me to give you dates all the way through,  
20 then I'm inclined to, to do it here, but the reality is it's  
21 such a long period of time, the, the subject matter of the  
22 discovery is so broad, and what might come up between here and  
23 the, and an estimation hearing is so uncertain that I think any  
24 dates we put are, are going to be more like mileposts instead  
25 of anything else. They're, they will keep us at least more or

1 less on tact, intact on following the path, but I can't think  
2 that we're going to be able to set them without some movement  
3 and adjustment as we go along and circumstances dictate.

4 I understand the debtor's desire to make sure that it  
5 gets the PIQs, the personal injury questionnaires, and the  
6 trust discovery before any deadlines run and before things move  
7 along. I agreed early on that the, with the debtors that that  
8 was general information in the case and not specifically tied  
9 to the adversary proceedings. I'm going to stick with that  
10 idea, but I recognize, also, that that information will be very  
11 important to the debtors, at least in their minds, on their  
12 theory of how we estimate and that that infor, they're going to  
13 be at a disadvantage if they don't get that information and the  
14 trust discovery before the rest of the discovery deadlines run.

15 So the bottom line is I hear you. I am certainly not  
16 going to reward obstreperous behavior. I'm not going to be  
17 very friendly if folks are willfully ignoring court orders and  
18 I certainly think that information should be provided because,  
19 otherwise, I wouldn't have ordered it.

20 So I'm keeping the PIQs and the trust discovery out of  
21 what we're talking about now, but telling you that I see that  
22 if there are failures to make discovery there that are  
23 wholesale or otherwise materially impairing the ability of the  
24 debtors to prepare for the estimation hearing, I'm going to  
25 make adjustments to the schedule and the estimation hearing.

1 So word to the wise there.

2           But I do agree with the representatives that we ought  
3 to go ahead and set firm dates so that we know what we're  
4 talking about and then adjust from there as need.

5           Now that's one place where I want to send y'all back  
6 to the drawing board because it is perilous for me to start  
7 setting those dates. I would only tell you that when it comes  
8 to these dates -- and I've gone through all of them in  
9 detail -- there's a knowledge that you need of what is being  
10 attempted here before you can really set them and know what's  
11 doable or workable. I'm not planning to cut anyone off at the  
12 knees with dates that aren't workable and I would suggest that  
13 you not do so, either.

14           So the bottom line is I want y'all to work on, on what  
15 these dates have to be and also consider do we need to go any  
16 farther than Aldrich and Murray are proposing in setting  
17 written discovery dates or should we do those, get them out of  
18 the way, get the disputes resolved, and then along towards the  
19 end of that you start negotiating as to what other dates would  
20 be usable and then if you can't agree, come back and talk about  
21 that maybe about a year down the road from here.

22           I'll leave that to your discretion. If you want, I'll  
23 set the dates all the way through. It just seems to me that  
24 once you get past about a year out or once you get past the  
25 written discovery period, whichever is longer, that it starts

1 becoming fairly ethereal and the likelihood that those dates  
2 are going to stick is quite in doubt. But that's, that's where  
3 I want you to go back and talk first.

4                   Second thing, initial disclosures. Obviously, the  
5 representatives want a, a broad amount of information from the  
6 debtor in the form of initial discovery, initial disclosures  
7 which, essentially, is the Court ordering the debtor to produce  
8 things. As in most things, you'll find that I want to follow  
9 the Federal Rules as much as I possibly can. And so I don't  
10 think Rule 26 really contemplates that sort of thing. I don't  
11 want to rewrite the Rules of Procedure based on, you know, a  
12 party's belief that it's at a disadvantage, especially in the  
13 case of the reps, the ACC particularly, where it's comprised of  
14 leading plaintiffs' firms in the country and they have access  
15 to quite a bit of information. But as to basic product  
16 information, the debtor's already agreed to give that and it  
17 was ordered in Bestwall and it doesn't seem to have caused any  
18 problems there.

19                   So there, there's a good bit of information there that  
20 I think can be provided and call it initial disclosures,  
21 whatever you want, without causing anyone any heartburn.

22                   Now under the ACC's draft or -- excuse me -- the reps'  
23 draft of this order in Document 1460 it wanted some more  
24 information that gets us off into contested discovery, in my  
25 mind. For example, the, the sites and locations of the

1 products, the serial numbers, the photographs, the identifying  
2 information, the names of all distributors and installers,  
3 copies of all purchase and sales records, and all testing  
4 records. I think you need to ask those things in  
5 interrogatories and then we'll see where we are about doing  
6 that. I know there are questions about burden. There are  
7 questions about whether it's even possible, whether the debtor  
8 has that information, questions of proportionality. I want to  
9 use the discovery rules and the protections that exist there to  
10 address those.

11 There was also an initial disclosure request wanting  
12 to know, basically, the names of custodians and noncustodians  
13 with discoverable information. That was in the Bestwall ruling  
14 as well and I'm inclined to allow that. The number of the  
15 parties, we, we're fighting over whether for custodians we'd  
16 get 30 or 20 or 15 or 10. Bottom line -- maybe not 10 -- the  
17 bottom line there is I think we ought to start at a reasonable  
18 number, like 20, and then if there's, if there are fewer  
19 custodians or noncustodians with that information, then, okay,  
20 fine. Give what you can identify. If there are more, we're  
21 going to need to adjust at some point. But the bottom line,  
22 for starters here I think we ought to just go with the, with  
23 the 20 that, that had been identified earlier.

24 There was also a question about -- let me see if I can  
25 find the part in the ACC that was -- hang on a moment -- shared

1 repositories and drives. I saw that in the Bestwall order, the  
2 debtor identifying those shared databases and drives likely to  
3 have discoverable information. That's close enough, in my  
4 mind, to a Rule 26 request to, to allow it. Bestwall had it.  
5 Again, I don't know what problems might have come out of that,  
6 but I hadn't, I'm not aware of any.

7 So those things, I think, in initial disclosures are  
8 fine. The bottom line, though, is I think the rest, once we  
9 start getting into other things, that -- and -- then I think we  
10 ought to use the discovery rules. Everybody needs to be, rest  
11 assured that I'm not going to move into an estimation hearing  
12 until everyone's had an, a fair opportunity to obtain discovery  
13 that they reasonably need with emphasis on the word "reasonably  
14 need" there. So bottom line, we'll do that.

15 As to the deadlines themselves, I don't mind us aiming  
16 for an October of '24 date for the estimation hearing and  
17 working back on, on deadlines if you want to go all the way  
18 there. I do think we ought to set the interim deadlines there.

19 Categorical privilege logs. Chances are with, if  
20 we're going to do discovery as broadly as what everyone  
21 foresees, we're going to need some of that. I don't think I  
22 have any business dictating it on the frontend, though. I  
23 don't think the law contemplates it in that fashion. The, the  
24 discovery's propounded to the debtor, the debtor reviews it,  
25 and the debtor tries to answer. If there's privilege logs, it

1 falls to the debtor first, assuming the debtor is the party on  
2 which discovery is being sought, to do the privilege logs.

3 I would say, though, that it makes a lot of sense for  
4 y'all to work those issues out and save yourselves some time  
5 and trouble later on and a great deal of expense. I'm aware of  
6 what happened in Bestwall. I'm aware that neither the  
7 claimants nor Judge Beyer were satisfied with what was  
8 initially produced. I fully agree that, that there needs to be  
9 sufficient detail, as the Rules require, so that you can  
10 evaluate the privilege. And the bottom line is if we can't  
11 tell from categorical logs, then we're going to be talking  
12 about going back and doing document-by-document. Let's save  
13 ourselves some time and trouble there and try to work together  
14 on, on the idea of what we could agree to if we're going to use  
15 categorical logs and what we can agree to if we're not using  
16 categorical logs as to the, the categories, the standards, the  
17 basic information to be provided.

18 But the bottom line is to the extent you can agree, I  
19 think we have to go through the process. You may be assured  
20 that if Judge Beyer found it to be insufficient, I'm likely to  
21 find it insufficient as well. So I would suggest to all  
22 parties who are going to be claiming privilege in the  
23 estimation process, give us as much information as you possibly  
24 can. As we've already discussed in the adversary context, even  
25 with 4,000 documents at issue it's not practicable to expect

1 the Court to do in-camera reviews of all that. If you're at a  
2 half million documents, then entirely impossible.

3 So we need to come up with a process here and I'm open  
4 for ideas of whether we need to have sampling on these  
5 documents. It would -- as a person who's not an expert in this  
6 field, it would seem to me that if you have a half million  
7 dollar privilege, half million privilege logged documents, that  
8 it is very likely that they're going to fall into set  
9 categories and that if you sample those documents, that you're  
10 probably going to end up with the same events that, that you  
11 would expect if you looked at all of them.

12 So I, I strongly suggest that you work on the basic  
13 contours of a privilege log for use in, in the estimation  
14 hearing in advance. The debtor has started with a proposal  
15 about what they would give with categories, plus metadata. The  
16 ACC's got some other thoughts, or the, the reps have other  
17 thoughts as to other information. I think you've, you're on a  
18 start there and I would strongly encourage you to work on that.

19 As to the timing of those privilege logs, we have a  
20 dispute as to when they should be provided, whether after every  
21 document production or whether after it was substantially  
22 complete. I think the latter makes more sense to me.

23 So I'd say that, let's say if you're at 80 percent of  
24 the documents, that probably is the time to do this. We don't  
25 need to do this two or three times because of the repetition

1 between individual productions.

2 I think I told you at the last hearing when we're  
3 moving on to the expedited discovery motions and briefs, the  
4 ACC and FCR were proposing cutting down those deadlines to a  
5 14-day motion, 5-day response, 2-day replies, and as I told you  
6 before, you folks are, for a judge that, in a two-judge court,  
7 you're taking up a lot of time now -- and I've got  
8 Aldrich/Murray as well -- I don't think I can accommodate any  
9 further reductions except in the case of emergencies and still  
10 get all your stuff read.

11 So I want you to stick with what the, the time periods  
12 we already have in our Local Rules.

13 The other thing I would say in that regard is not  
14 something y'all argued about, but which I need to mention. I'm  
15 seeing way too many briefs in these cases that exceed the 25-  
16 page page limits and what's happening in most is the parties  
17 file a 50 or 60 or 70-page brief and then file a motion to  
18 permit the, exceeding the, the time periods [sic]. Those are  
19 too long. The bottom line is if you want me to focus on the  
20 important stuff, you don't need to repeat all the extraneous  
21 things and all of the prior case history. And there's just a  
22 limit to what we can use.

23 So I don't want to start striking pleadings, but I'm  
24 telling you on the frontend you need to, to either adhere to  
25 the 25-page rule, or, if you need to get an exception, ask in

1 advance of filing your brief and explain why it's not possible  
2 to live with that.

3 Now I've also noticed a tendency in these two cases  
4 for parties to start using their motion as their brief and,  
5 therefore, try to get out from under the page limits. I would  
6 discourage that. We're going to end up with the same thing  
7 going on. I understand we're fighting over some broad ground  
8 and where there's a need, when we get something as broad as,  
9 for example, the motions to dismiss the adversary that we just  
10 talked about, I'm going to give you the extra ground.

11 But otherwise, for routine and mundane case motions,  
12 don't try to have 50 or 60 pages instead of 25. It's, it's  
13 counterproductive to you because I'm going to be less inclined  
14 to, to pay attention to what you have and if I start telling  
15 you to rewrite your briefs, you're going to be in a real  
16 disadvantage there. So that's just an extraneous thought by  
17 me.

18 There was a request by the reps for a 502(d) order. I  
19 agree with the debtor here. The Court cannot mandate that.  
20 That would be a wholesale evisceration of attorney-client  
21 privilege and work product protections. On the other hand, I  
22 agree, especially if you're going to have discovery as broad as  
23 what we're talking about, that it would be a good thing to have  
24 some of that, particularly if we're talking about sampled  
25 items.

1                   In making those rulings, I would also note that the  
2 representatives would like to see this case dismissed, been  
3 very vocal about it from Day 1. If I gave you under 502(d) all  
4 of the documents of all of the plaintiffs' defense attorneys  
5 from the tort system actions and then the case got dismissed,  
6 where does that leave the, the debtor or Old, New CertainTeed  
7 in defending those tort claims? You've then given the entirety  
8 of the other side's file.

9                   So it just can't work that way. On the other hand, I  
10 think that we can start identifying common issues and come up  
11 with some examples and some, some sampling and maybe make good  
12 use of the 502(d) to illustrate issues and problems that need  
13 to be resolved.

14                   Finally, the joint discovery plan. The ACC has taken  
15 the Bestwall plan and made what it considers to be minor  
16 modifications. The debtor wants to use the negotiated  
17 adversary discovery plan. I've looked at the various plans and  
18 while I'm hardly a tech person, absent agreement, I think we  
19 ought to just stick with what's been done in the Bestwall plan.  
20 That's kind of a halfway point between the two sides and we'll  
21 need to modify it based on the comments I've just made here, or  
22 whatever else you can work out. But that's basically it.

23                   Now there were a lot of details about when we do what  
24 in this. If we are absolutely pressed to do that, I suppose I  
25 could go through, but, as I said, I'm reluctant to do so. I've

1 probably caused enough disruption in what y'all've got intended  
2 by what I've said so far. I think the best thing to do would  
3 be for y'all to take what I've, I've given you as preliminary  
4 rulings and go back and see if you can't make this thing work a  
5 little better with deadlines that work for all of you.

6 But if you think there are other things we need to  
7 talk about, now's the time to sing out.

8 Anyone?

9 MR. GORDON: It's Greg Gordon, your Honor, on behalf  
10 of the debtor. Mr. Ellman may want to join in, too.

11 But no, I don't think there's anything else  
12 specifically we would raise. We very much appreciate your  
13 Honor's guidance. We recognize that that was a lot for the  
14 Court to work its way through and we appreciate the effort.

15 We will certainly get back together with the other  
16 side and, you know, with guidance we've been given and  
17 hopefully, reach a full agreement on everything and, if not, I  
18 guess we would ask your Honor's indulgence to come back one  
19 more time if there are any lingering issues. But I'm hopeful  
20 that that won't happen.

21 THE COURT: Ms. Ramsey.

22 MS. RAMSEY: Your Honor, I, I agree. I think that the  
23 Court's guidance was very helpful and, and I think we can  
24 probably resolve most of the issues through negotiation.  
25 Hopefully, we won't have to come back to the Court, but it

1 could happen.

2 THE COURT: Ms. Zieg, feel differently?

3 Anyone --

4 MS. ZIEG: No, I agree, your Honor. I think, I think  
5 with your guidance we can and move forward and see what issues  
6 we can resolve and, and most of them should be. I think the  
7 only issue that, that may lead to some, some dispute will be  
8 timing.

9 THE COURT: Okay, very good.

10 Well, you've all made my day by saying that. I, I've  
11 detailed notes and I tried to, a comparison of your CMOs and  
12 those are the easy parts as compared to looking through the  
13 discovery orders. But I think that will probably serve you  
14 well. I had intended that if, to the extent we still had  
15 lingering disputes, that we talk about them at the next  
16 hearing, which is, what, August the 11th.

17 So that work for everyone?

18 MS. ZIEG: That makes sense to me, your Honor.

19 THE COURT: Okay, very good.

20 MR. GORDON: Yes. And that works for the debtor as  
21 well. Thank you.

22 THE COURT: All right.

23 Any other matters?

24 MR. ELLMAN: Your Honor, this is, this is Jeffrey  
25 Ellman on behalf of the debtors.

1 I, I do have one update on the report we gave earlier  
2 about the Eastern District of Virginia. While we were on this  
3 call, I had a, a colleague reach out to the clerk's office  
4 there.

5 I can, I can tell you a couple things. One, what they  
6 do is they mail in regular mail the order --

7 THE COURT: Right.

8 MR. ELLMAN: -- that transferred the matter to this  
9 court.

10 THE COURT: Okay.

11 MR. ELLMAN: They don't (audio skips). They just  
12 mailed it to Clerk, U. S. Bankruptcy Court, not address any  
13 person in particular. And it was just the order. So they,  
14 they don't send any of the other pleadings, like the motion to  
15 quash, the responses, all that stuff.

16 So somehow --

17 THE COURT: Hmm.

18 MR. ELLMAN: -- once we get it on your Honor's docket,  
19 I guess we'll have to find a way to, to refile those papers or  
20 have the parties submit them somehow. So it seems like we need  
21 to figure out how this should work.

22 But to the extent it did get to the court there in  
23 North Carolina, it would have come in regular mail some,  
24 somehow.

25 THE COURT: Okay. If we have it, I'm not aware of it.

1                   But for those of you who are LTL veterans, when we  
2 sent the case to New Jersey, I think our electronic docket went  
3 to the bankruptcy court there. Now whether -- if you're  
4 talking about a district court you can send something, I have  
5 no idea. I'm the least tech savvy person in this room.

6                   But the -- it would seem to me that we can get those  
7 documents filed in the appropriate spot. I will just go double  
8 check with my office and make sure they don't have anything and  
9 speak to IT.

10                  Is there someone in particular on each party's side  
11 that should be the contact person for us to have our clerk's  
12 office respond to? Anyone?

13                  MR. ELLMAN: Well, I mean, I'm happy to do that on  
14 behalf of the debtor. I, I can't really speak for the, the  
15 matching claimants, who, I don't think, are really even  
16 represented here today. But we, we could certainly send to the  
17 Court copy parties as to who we, who we know has appeared in,  
18 in the Eastern District of Virginia.

19                  THE COURT: Okay.

20                  MR. ELLMAN: But that's all we could really -- I think  
21 that's probably the best we could do at this point.

22                  THE COURT: Well, this is, to my mind, a ministerial  
23 function. I just want to know who to have my tech people call  
24 to try to figure out where these things are and, and to know  
25 who you've been speaking to in Virginia, so. Okay?

1                   MR. ELLMAN: Oh. Oh, your Honor, I can certainly talk  
2 to my colleague about who we've talked to at the clerk's office  
3 there and let the Court know that.

4                   THE COURT: Okay, very good.

5                   All right. My law clerk is out of the office at the  
6 moment. She's taking vacation this week. So I would  
7 suggest --

8                   Mr. Bender, do you mind if we send that to you? Okay.

9                   Kollin Bender, many of you know from our other cases,  
10 is our other law clerk --

11                  MR. ELLMAN: Okay.

12                  THE COURT: -- and he's sitting in with us today.  
13 K-O-L-L-I-N; B-E-N-D-E-R, with all the uscourts.gov  
14 information.

15                  So if you'll send that to him, I think that'll --  
16 that'll -- we'll try to get some IT people to take a look and  
17 see what we might have and how we can get that information from  
18 Virginia, okay?

19                  MR. ELLMAN: We will do that, your Honor. Thank you.

20                  THE COURT: All right.

21                  Anything else?

22                  (No response)

23                  THE COURT: Okay. We'll stand down until 2:00 when we  
24 do much of the same thing in the other cases.

25                  All right. Thank you all.

1 MR. ELLMAN: Thank you, your Honor.

2 MS. ZIEG: Thank you, your Honor.

3 MR. ELLMAN: Thank you, your Honor.

4 MR. GORDON: Thank you.

5 MS. RAMSEY: Thank you.

6 (Proceedings concluded at 10:38 a.m.)

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10 CERTIFICATE

11 I, court approved transcriber, certify that the  
12 foregoing is a correct transcript from the official electronic  
13 sound recording of the proceedings in the above-entitled  
14 matter.

15 /s/ Janice Russell

July 11, 2022

16 Janice Russell, Transcriber

Date

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